

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF GEORGIA**  
**STATESBORO DIVISION**

CHARLES ANTHONY WILLIS,	)	
	)	
Movant,	)	
	)	
v.	)	Case No. CV612-089
	)	CR606-026
UNITES STATES OF AMERICA,	)	
	)	
Respondent.	)	

**REPORT AND RECOMMENDATION**

Serving a 151-month sentence, doc. 1007, Charles Anthony Willis has filed a *third* 28 U.S.C. § 2255 motion, masquerading as an “Amended Petition.” Doc. 1520.<sup>1</sup> Willis challenges his sentence by invoking *Alleyne v. United States*, \_\_\_ U.S. \_\_\_, 133 S. Ct. 2151 (2013) (extending what's known as the *Apprendi* doctrine to statutory minimum penalties by holding that “any fact that, by law, increases the penalty for a crime is an ‘element’ that must be submitted to the jury”). Doc. 1520 at 4-25. But “*Alleyne*'s rule does not apply retroactively on collateral review.” *Chester v. Warden*, 552 F. App’x 887, 891 (11th Cir. 2014); *United States*

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<sup>1</sup> The Court is citing only to the criminal docket and using its docketing software's pagination; it may not always line up with each paper document's printed pagination.

*v. Winkelman*, 746 F.3d 134, 136 (3rd Cir. 2014); *McKeever v. United States*, 2014 WL 2593328 at \* 5 (S.D. Ga. June 9, 2014). Because Willis cannot meet § 2255's savings clause,<sup>2</sup> his latest § 2255 motion must (doc. 1520) must be **DENIED** as successive.

Applying the Certificate of Appealability (COA) standards, the Court discerns no COA-worthy issues at this stage of the litigation, so no COA should issue. 28 U.S.C. § 2253(c)(1). And, as there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. Thus, *in forma pauperis* status on appeal should likewise be **DENIED**. 28 U.S.C. § 1915(a)(3).

**SO REPORTED AND RECOMMENDED**, this 20<sup>th</sup> day of June, 2014.

  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA

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<sup>2</sup> See *Williams v. Warden. Fed. Bureau of Prisons*, 713 F.3d 1332, 1343 (11th Cir. 2013) ([t]he savings clause of § 2255 applies to a claim when: 1) that claim is based upon a retroactively applicable Supreme Court decision; 2) the holding of that Supreme Court decision establishes the petitioner was convicted for a nonexistent offense; and, 3) circuit law squarely foreclosed such a claim at the time it otherwise should have been raised in the petitioner's trial, appeal, or first § 2255 motion."); *Mendoza v. Hastings*, 2014 WL 1665222 at \* 3 (S.D. Ga. Apr. 25, 2014).